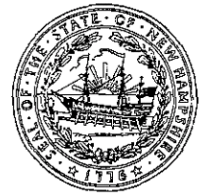




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



H&H Oil Company, Inc.
437 Portsmouth Avenue
Greenland, New Hampshire 03840

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 03-008**

April 30, 2003

I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division (the "Division") to H&H Oil Company, Inc., pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,600 be imposed against H&H Oil Company for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03302-0095.
2. H&H Oil Company is a corporation registered in the State of New Hampshire having a mailing address of 437 Portsmouth Avenue, Greenland, New Hampshire 03840.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.
4. H&H Oil Company Inc. is the owner of Greenland Mobil, a gasoline-dispensing facility doing business at 437 Portsmouth Avenue, Greenland, Rockingham County, NH 03840, (the "Facility"). The Facility meets the throughput requirements specified in Env-A 1205.19.
5. On October 1, 1997, the Division issued Certificate of Compliance No. II-980114 (the "Certificate") to the Facility.

6. Env-A 1205.27(b) states that a stage II Certificate "shall be valid for no more than three years".
7. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a stage II system within 90 days prior to the expiration date of any Certificate issued by the Division to the owner.
8. Env-A 1205.28(b) requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the Certificate.
9. Env-A 1205.23(b) requires the owner or operator of an applicable gasoline dispensing facility to notify the Division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur and the name of the person who is responsible for such testing.
10. The Certificate expired on October 1, 2000.
11. On February 1, 2001 Division personnel contacted Charlotte, the Facility manager, by telephone and notified her that the Facility's stage II vapor recovery certification had expired on October 1, 2000, that the equipment needed to be re-tested, and that a \$200 renewal fee was due along with the notification form. A blank notification form was faxed to the Facility.
12. On April 30, 2001, the Division received a completed notification form and \$200 renewal fee from the Facility.
13. On July 25, 2001, the Division sent a letter to the Facility notifying it that the stage II vapor recovery equipment needed to be re-tested and gave the Facility 30 days to perform a successful re-test.
14. On February 26, 2002, Division personnel telephoned Chip Hussey, the Facility's contact person, and notified him that the Facility's stage II certification had expired and the vapor recovery equipment needed to be re-tested.
15. On May 17, 2002, Division personnel telephoned Chip Hussey at the Facility and informed him that he needed to arrange for a stage II re-test.
16. On August 12, 2002, Division personnel again called Chip Hussey at the Facility and told him that he must schedule a stage II re-test.
17. On August 26, 2002, the Facility failed a scheduled stage I/II re-test. Division personnel witnessed the test.

18. On October 7, 2002, Division personnel telephoned the Facility and advised the manager that Wayne Services, the vapor recovery testing company hired by the Facility, had not scheduled another re-test since canceling the stage II re-test originally scheduled for September 16, 2002.

19. On October 10, 2002, Chip Hussey telephoned the Division seeking information regarding the type of test that needed to be conducted in order to bring the Facility into compliance. Mr. Hussey decided to obtain the services of another testing company, as Wayne Services had failed to complete the stage II re-test.

20. On October 28, 2002, the Division received a phone call from Wayne Services. A representative of Wayne stated that the company had just completed a re-test at the Facility, and would forward the test results. Division personnel did not witness the test.

21. On December 2, 2002, Division personnel faxed a letter to Wayne Services requesting that Wayne provide the Division with the results from the stage II re-test that had reportedly been done at the Facility on October 28, 2002.

22. On December 4, 2002, Wayne Services telephoned the Division to report that it did not have the stage II re-test results from the Facility.

23. On December 12, 2002, Tanknology telephoned to inform the Division that it would be conducting a stage II re-test at the Facility on December 26, 2002.

24. On December 26, 2002 the Facility passed the required stage II re-test, and is now in compliance.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. H&H Oil Company, Inc. has violated Env-A 1205.24(a)(2) by failing to re-test the stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,600 for this violation.

2. H&H Oil Company, Inc. has violated Env-A 1205.28(b) by failing to pay the \$200 renewal fee required on or before the expiration date of the Certificate. The Division has determined that Violation 2 is a minor deviation from the requirements with minor potential for harm. RSA 125-C:15,I-b(b) specifies a fine range of between \$100 and \$1,000. At this time, the Division is not seeking a fine for this violation.

The total fine being sought is \$1,600.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than May 29, 2003, using the enclosed colored form.

1. If H&H Oil Company would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If H&H Oil Company chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If H&H Oil Company wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate H&H Oil Company's interest in settling. H&H Oil Company is not required to be represented by an attorney. If H&H Oil Company chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that H&H Oil Company committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the things sought to be proved is true.

If the Division proves that H&H Oil Company committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- ❖ Pursuant to Env-C 601.09, the fine will be **reduced by 10%** for each of the circumstances listed below **that H&H Oil Company proves, by a preponderance of the evidence**, applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** H&H Oil Company did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** H&H Oil Company did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, H&H Oil Company was making a good faith effort to comply with the requirement that was violated.

3. H&H Oil Company has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to H&H Oil Company's case, which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that H&H Oil Company committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is H&H Oil Company's opportunity to present testimony and evidence that H&H Oil Company did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If H&H Oil Company has any evidence, such as photographs, business records or other documents, that H&H Oil Company believes show that H&H Oil Company did not commit the violation(s) or that otherwise supports H&H Oil Company's position, H&H Oil Company should bring the evidence to the hearing. H&H Oil Company may also bring witnesses (other people) to the hearing to testify on H&H Oil Company's behalf.

If H&H Oil Company, Inc. wishes to have an informal meeting to discuss the issues, H&H Oil Company must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If H&H Oil Company, Inc. has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.

COPY

Pamela G. Monroe,
Compliance Bureau Administrator
Air Resources Division

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cc: M. Harbaugh, DES Legal Unit
S Alexant, DES Hearings and Rules Attorney
R. Kurowski, EPA Region I
J. Weeks, Chairman of Selectmen, Town of Greenland
AFS# 330008444

RETURN THIS PAGE ONLY

H&H OIL COMPANY, INC. IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN MAY 29, 2003

Please check the appropriate line and fill in the requested information below.

APPEARANCE ON behalf of H&H Oil Company, Inc.,

____ I request to have a **formal hearing** scheduled in this matter.

____ I request to have a **pre-hearing conference** scheduled in this matter.

____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of H&H Oil Company, Inc.,

____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$1,600 paid to "Treasurer, State of New Hampshire" is enclosed. *

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

Michael Sclafani, Legal Assistant

Department of Environmental Services ~ Legal Unit

6 Hazen Drive, P.O. Box 95

Concord, NH 03302-0095

* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.